

LAW OFFICES OF THOMAS J. WAGNER

By: Thomas J. Wagner, Esquire ID #: 52876

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Attorneys for Defendant Alabama Motor Express, Inc.

JAMES A. SOUDER and LANA SOUDER
Plaintiffs

v.

ALABAMA MOTOR EXPRESS, INC.

and

ERIC M. BRION

Defendants

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

JANUARY TERM 2005

NO.: 1732

NOTICE OF REMOVAL

TO THE PROTHONOTARY:

Pursuant to the Federal Removal Statute, 28 U.S.C. §§ 1441-1446, Defendant Alabama Motor Express, Inc. files herewith a certified copy of the Notice of Removal filed in the United States District Court for the Eastern District of Pennsylvania on this 12th day of January, 2005.

LAW OFFICES OF THOMAS J. WAGNER

By: _____
Thomas J. Wagner, Esquire
Celeste C. Harrison, Esquire
Attorneys for Defendant Alabama Motor Express,
Inc.

Dated: February 18, 2005

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PETITION FOR REMOVAL

Defendant Alabama Motor Express, Inc. seeks to remove an action now pending against it in the Pennsylvania Court of Common Pleas, Philadelphia County, Law Division, January Term, 2005 #1732 to this Court pursuant to the Federal Removal Statute, 28 U.S.C. §§ 1441 through 1446, and in support thereof aver that:

1. Plaintiffs James Souder and Lana Souder ("Plaintiffs"), commenced this personal injury action against Defendants or about January 12, 2005 in the Pennsylvania Court of Common Pleas, Philadelphia County, January Term 2005 #1732. (See copy of Complaint, attached hereto as Exhibit "A").

2. Defendant Alabama Motor Express, Inc. was served with Plaintiffs' Complaint on January 27, 2005.

3. This action satisfies the requirements for removal within the meaning of 28 U.S.C. §§ 1332 and 1446 in that:

a) **Plaintiffs' and Defendants' citizenship are diverse;**

- 1) Plaintiffs are citizens of the Commonwealth of Pennsylvania;
- 2) Defendant Alabama Motor Express, Inc. is a citizen of the State of Alabama, where it is incorporated and where it has its principal place of business; and
- 3) Defendant Eric M. Brion is a resident of Alabama.

b) As required by 28 U.S.C. § 1446, Plaintiffs have asserted a claim in excess of \$75,000.00. Therefore, the amount in controversy is in excess of \$75,000.00, exclusive of interest and costs.

4. Plaintiffs' Complaint did not contain any indication of the total amount in controversy, but stated that they seek an "amount in excess of the statutory arbitration limits".

5. Plaintiffs described Mr. James Souder's injuries as:

severe and permanent injuries, a severe shock to his nerves and nervous system, aggravation, acceleration and activation of any pre-existing ailments or conditions and more particularly, but not in limitation of any other personal injuries he may have sustained, the plaintiff suffered a disruption of his autonomic nervous system, resulting in an inability to swallow solid food, a torn right rotator cuff, an ulnar neuropathy and an internal disruption of the right knee, as a result of which he suffered great physical pain and mental distress, which he yet suffers and may continue to suffer for an indefinite time in the future.

(Exhibit "A" para. 8).

6. Plaintiffs allege that as a result of Mr. Souder's injuries:

Plaintiff James A. Souder has been and continues to be unable to attend to his normal activities and vocations, as a result of which he has sustained a loss of life's pleasures.

Plaintiff James A. Souder has been and continues to be obliged to receive medical attention and care and to expend various sums of money and incur various expenses in an effort to obtain a cure for his injuries and may continue to incur such expenses for an indefinite time in the future.

Plaintiff James A Souder's vehicle was severely damaged and

declared a total loss, as a result of which the plaintiff has incurred additional expenses for the replacement of his vehicle.

(Exhibit "A" paras. 9-11).

7. From the face of Plaintiffs' Complaint, including Plaintiffs' description of their injuries and damages, Plaintiffs contend that their claims are valued in excess of \$75,000.00 exclusive of interest and costs. The citizenship of the parties is diverse. Thus, this Notice of Removal is filed within the time provided by 28 U.S.C. §1446 (b).

8. If Plaintiffs stipulate that their damages do not exceed \$75,000.00, Defendant Alabama Motor Express, Inc. will withdraw this Petition for Removal and will litigate this action in State Court. A copy of the proposed Stipulation is attached as Exhibit "B".

9. A jury trial of twelve jurors is demanded by Defendant.

10. All Defendants consent to removal.

WHEREFORE, Defendant Alabama Motor Express, Inc. prays that the above action now pending against it in the Philadelphia County Court of Common Pleas, January Term, 2005, #1732 be removed therefrom to this Court.

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Celeste C. Harrison, Esquire
Attorneys Defendant Alabama Motor Express, Inc.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petition for Removal was served on the following counsel via First Class Mail, Postage Prepaid on the date noted below:

David B. Winkler, Esquire
Law Offices of David B. Winkler, P.C.
1930 Route 70 East
Building Q
Cherry Hill, NJ, 08003

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